IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9123 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHARIWAL INDUSTRIES LIMITED & 8 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS.JIRGA JHAVERI for Petitioners
MR UR BHATT, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 07/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Ms. Jirga Jhaveri, learned counsel for the petitioner no. 9 submits that she has instructions from the petitioners no. 1 to 8 to appear for them.

2. By the present writ application, the petitioners seek to challenge the constitutional validity of the Entries No. 5 and 6 for insertion with effect from 1.9.01 in the Schedule to the Gujarat Tax on Luxury Commodities Act, 1995 by the Gujarat Tax on Luxury Commodities Amendment Act, 2001.

3. The Supreme Court in the matter of **Godfrey Phillips India Ltd. & Anr. V. State of U.P. & Ors. [AIR 2005 SC 1103]** has held a similar provision in the U.P. Act as *ultra vires* the Constitution. Following the said judgment in the matter of Godfrey Phillips Vs. State of U.P. & ors., Division Bench of this Court has also held that insertion of Entries No. 5 and 6 in the Schedule would be *ultra vires* the Constitution. In view of the said authoritative pronouncement by the Apex Court and the Division Bench, the

petition will have to be allowed, it is accordingly allowed.

4. On the last date, we required the learned counsel for the State to file a detailed affidavit of some officer that whether the petitioners, after collecting the amount of tax from the consumers have paid the amount of tax to the State Government and which of the petitioners have not collected the tax at all. The order was passed on 14.7.06, but unfortunately, till date, the State has not come out of its slumber nor has risen to the occasion to file affidavit in response to the direction of the Court. Ms. Jhaveri, learned counsel for the petitioners submits that the petitioners who had collected the tax have deposited tax in full with the State Government. We have no reason to disbelieve this statement in absence of any affidavit from the side of the State Government. The petition stands disposed of. Let a copy of this order be sent to the Chief Secretary for appropriate action against the concerned persons who are obliged to file an

affidavit in response to the directions of the Court, because, Mr. Bhatt informs that from the office of the Government Pleader, a fax was sent to the concerned department on 18th July, 2006. The petition stands allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

[D.H.WAGHELA, J.]

Later on, at 1.30 p.m. Mr. Dipen Desai, learned AGP appeared and submitted that certain factual mistake has crept in our order which is required to be corrected. List tomorrow for our consideration. Let the name of Mr. Sunit Shah, learned Government Pleader be also shown in the list as we propose to hear him in this matter and have an open dialogue in the Court.

[R.S. GARG, J.]

[D.H. WAGHELA, J.]

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